IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/03/2004

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice F.M. IBRAHIM KALIFULLA

W.A. No.926 OF 2002

R. Suresh Kumar
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No.19 Crescent Avenue
Kesavaperumal Puram
Chennai 600 028 ... Appellant

-Vs-

1. Union of India
rep. by Ministry of Law Justice &
Company Affairs, New Delhi
2. State of Tamil Nadu
rep. by Secretary to Ministry of Law
Chennai 9
3. The Registrar
High Court of Judicature at Madras
Chennai 104 ... Respondents

Appeal under Cl.15 of the Letters Patent against the order
dated 26-2-2002 in W.P. No.3333 of 2002

!For Appellant :: Mr. K.M. Vijayan
Senior Counsel, for
M/s. La Law

^For Respondents :: Mr. V.T. Gopalan
Addl. Solicitor General
assisted by
Mr. Madhanagopal Rao
Sr.C.G.S.C.
Mr. R. Muthukumarasamy
Addl. Advocate General
assisted by
Mr. P. Chandrasekaran,
Spl.G.P.

:JUDGMENT

V.S. SIRPURKAR, J.
The appeal is directed against a common judgment, dismissing the writ petitions, W.P. Nos.2402 and 3333 of 2002 along with the WPMPs therein. By W.P.No.2402 of 2002, a practising Advocate of this Court, sought for a Writ, declaring the whole process of establishment of a permanent Bench of the Madras High Court at Madurai to be unconstitutional and illegal. In W.P. No.3333 of 2002, which was also filed by a practising Advocate of this Court, similar kind of Writ was sought, seeking a declaration that the decision under Clause 31 of the Letters Patent of High Court of Madras seeking to constitute and establish a Bench of the High Court of Madras at Madurai as illegal, void and unconstitutional for being passed in violation of the legislative powers of the Parliament under Article 246 read with Entry 78 of the Union List in Schedule VII to the Constitution of India and inconsistent with Article 214 of the Constitution of India. After the dismissal of these two writ petitions by the learned single Judge, writ petitioner in W.P. No.2402 of 2002 did not proceed. However, writ petitioner in W.P. No.3333 of 2002 has proceeded to challenge the decision by way of this appeal. We will, therefore, take into consideration the contentions raised in W.P. No.3333 of 2002.

2. The High Court of Judicature at Madras was established in the year 1862 under the Letters Patent issued by Queen Victoria. Till today, it has only one seat at Madras (Chennai). It is vaguely stated in paragraph 6 of the writ petition that the minutes of the Full Court Meeting of the Madras High Court, proposing to establish a Bench at Madurai declares a Circuit Bench at Madurai (probably meaning that the Full Court recommended a Circuit Bench at Madurai) and not a permanent Bench. The petition is silent about the date of the Full Court resolution. It is then suggested that in the said resolution, the Full Court inflicted certain pre-conditions like appointment of the full sanctioned strength of Judges of both permanent and additional and creating permanent establishment by acquiring land and constructing court-building, providing nine court halls and providing additional staff and protocol officers. In paragraph 3, the petitioner has declared that the petition was not being filed for protection of any of his interest, which would be hampered because of the bifurcation of the High Court at Madras. It is declared that the petitioner was only concerned with the larger interest of the need for confining to the rule of law and restricting the dignity and structural integrity of High Court at Madras in the interest of all the Members of the Bar including the petitioner. The petitioner refers to Clause 31 of the Letters Patent and asserts that creation of a Bench at Madurai amounted to organising and constituting a High Court as contemplated under Entry 78, List I of VII Schedule to the Constitution of India. It is then contended that Clause 31 read with Clause 44 of the Letters Patent specifically declares that the power to sit in other places other than the principal seat, first requires the pre-approval of the Governor-in-Council (now Governor). Relying on the language of Articles 214 and Art.366(14) of the Constitution of India, the petitioner states that there would be only one High Court for each State and that the establishment of such a High Court is legislative function, exercisable by the Parliament under Art.246 of the Constitution of India. It is then pleaded that the High Court cannot exercise its jurisdiction under Clause 31 of the Letters Patent to establish a Bench at

Madurai even assuming that it is a □circuit Bench□ as there is no Governorin-Council. It is then suggested that Clause 31 is not the legislation of the Parliament and cannot go in contrast to the legislature and Constitution of India. In the grounds also, it is reiterated that the resolution passed by the Full Court, though for the establishment of a □circuit Bench□ was beyond the jurisdiction of the High Court. It is then suggested that since the State of Tamil Nadu is approachable from one end to another by rail or road, the expenditure involved in creating the infrastructure, etc. is unwarranted and instead the position of the Judges could be improved by increasing the number of Judges. Very interestingly in paragraph 19, the petitioner says:
□Even though the proposal for establishing a Bench of High Court at Madurai is mooted for more than a period of 30 years, the same was actively implemented only recently and further I am a new entrant to High Court of Madras quiet recently therefore the issue of lapses on the part of the petitioner will not arise.□
We have already indicated the prayer above.

3. Learned single Judge considered the writ petitions together though he dealt with them separately. In the first mentioned writ petition, the ground raised was that the High Court of Madras is not the High Court of a □new State□ within the meaning of Sec.2(i) of the States Reorganisation Act, 1956 but of an □existing State□ as defined under Sec.2(g) of the said Act and, therefore, the whole process initiated by the High Court to establish a permanent Bench at Madurai under the provisions of the State Reorganisation Act, 1956 is illegal.

4. In short, the contention was that since the State of Tamil Nadu is not a new State, the provisions of Sec.51 and more particularly sub-sections (2) and (3) thereof as also the provisions of Sec.49 were not applicable and, therefore, the permanent Bench of the High Court could not be created taking recourse to that power. It was also contended before the learned single Judge as before us that there cannot be any exercise taken like passing of the Full Court resolution, recommending the establishment of a circuit or permanent Bench at Madurai unless there was a legislation by the Central Government and the said Legislation had to be via the legislative power conferred by Entry 78 of the List I and that there was no such legislative exercise for creation of the Bench and as such any steps taken by the High Court by passing the resolution in the Full Court would be futile and would be without jurisdiction. In addition to this, it was also stated that if any attempt is made to create a permanent Bench taking recourse to Sec.51 of the States Reorganisation Act with the Presidential Notification then, such an attempt and the resultant notification would be without jurisdiction as Sec.51 of the said Act was applicable only to the new States and the State of Tamil Nadu was not a □new State□. It was also contended that there could not be even an exercise under Clause 31 of the Letters Patent as the Letters Patent was subservient to the Constitution and as such, the constitutional provisions, which came on later, could not be bypassed by taking recourse to Clause 31 for creation of the Bench. Lastly, the argument was that any exercise made by the State Government or the expenditure spent for creating the infrastructure in terms of the resolution of the Full Court was also

completely unwarranted and even the resolution passed by the Full Court was beyond the jurisdiction of the High Court.

5. Learned single Judge took the resume of the whole history, starting from Indian High Courts Act, 1861, which empowered the Crown to establish by Letters Patent, High Courts of Judicature at Calcutta, Madras and Bombay for the respective Presidencies. Learned Judge then referred to the Letters Patent dated 14-5-1862, establishing the High Court of Judicature at Calcutta. Learned single Judge then referred to the Indian High Court Act, 1865 which made some minor alterations in the territorial jurisdiction of the Chartered High Courts established under the High Court Act 1861. A reference was then made to the Government of India Act, 1915 and Government of India Act 1935 which created certain other High Courts and also referred to Government of India (Adaptation of Indian Laws) Order, 1937, which had the effect of continuing the effect of Letters Patent, 1865 with some changes. Learned Judge then referred to the Constitution of India and more particularly to Art.214 and Art.225 under which the jurisdiction and the powers in relation to the administration of justice including any power to make rules and to regulate the sittings of the Court was to remain the same as immediately before the commencement of the Constitution. Learned single Judge, therefore, came to the conclusion that the Letters Patent, being an existing law, was continued by force of the Government of India Acts 1915 and 1935 and the Constitution of India. A reference was thereafter made to the order known as Adaptation of Laws Order, 1950 whereby the expression □provincial□ was to be read as □State Government□ and for the expression □Governor-in-Council□ in Clause 31 of the Letters Patent, the word □Governor□ was to be substituted. The learned single Judge then referred to the creation of the High Courts of Andhra Pradesh, Kerala, Mysore, Rajasthan, Gujarat, Guahati and Himachal Pradesh, which were crated by different enactment including the States Reorganisation Act, 1956. The learned single Judge then noted that in case of all these High Courts, the legal provisions which created them contained the provisions for (i) the place of the principal seat of the High Court; (ii) for establishment of permanent Bench other than the principal seat by the Notification of the President and (iii) to provide for a Circuit Bench outside the place of principal seat by the Chief Justice with the approval of the Governor. Learned Judge then specifically referred to Sec.51 of the State Reorganisation Act, 1956 and noted the law laid down in Umaji v. Radhikabai (AIR 1986 SC 1272) wherein their Lordships of the Supreme Court had recognised the power of the High Court as per its Charter, including its□ rule-making power. Learned Judge, referring to the judgment in State of Maharasthra V. Narayanan (AIR 1983 SC 46) and traced the entire history of the Bombay High Court and the creation of the Benches at Nagpur and Rajkot to begin with from 1-11-1956 up to 1-5-1960 when the erstwhile bilingual State of Bombay was bifurcated into two separate States, they being State of Maharashtra and State of Gujarat by the Bombay Reorganisation Act, 1960. The learned single Judge noted then the creation of the Bench of Bombay High Court at Aurangabad. After quoting from the judgment in extenso, the learned Judge reached the conclusion that the constitution of the High Court depends on the statute creating it and that the provisions akin to Sec.51 of the States Reorganisation Act 1956 existed in all the Letters Patent or the Acts under which the various High Courts have been constituted. The learned Judge

ultimately came to the conclusion that every High Court whether it was created by the Letters Patent or other enactment could have the Benches outside the principal seat by virtue of the provisions contained in the Letters Patent or in the Acts which created them.

6. Learned single Judge then held that the Madras High Court would also be covered by the State Reorganisation Act, 1956 since Madras was also a State, which was a subject-matter of the State Reorganisation Act, 1956 in terms of Sec.4 in Part II of the said Act. Quoting Sec.4 of the said Act, it was pointed out that some territory from the erstwhile State of Madras while some others, which were not part of the Madras State, were added. The learned Judge, therefore, held that the State of Madras was a □new State□ within the meaning of State Reorganisation Act and, therefore, there was always a power available to the Chief Justice under Sec.51(3) of the State Reorganisation Act and that the permanent Benches could also be set up under Sec.51(2) of the said Act. On these reasons, the learned single Judge dismissed the writ petition, W.P. No.2402 of 2002.

7. In so far as the writ petition, W.P. No.3333 of 2002 was concerned, the learned Judge refuted the arguments that under Art.214 there could be only one High Court for each State and held that the Benches of the High Court are as much part of the main High Court. For this also, learned single Judge relied on the aforementioned decision in State of Maharashtra v. Narayanan (supra). Learned Judge then rejected the contention raised in that petition that the jurisdiction to deal with the High Court was a parliamentary power and in the absence of any parliamentary law or constitutional provision, no such decision can be taken. For this, learned Judge relied on Arts.225 and 372 and the Letters Patent. Lastly, the learned single Judge also refuted the contention that Clause 31 of the Letters Patent could not be invoked because of the unamended language of the said Letters Patent. It was pointed out that by Adaptation Order, 1937 and 1950, the provisions would have to be read and the suitable changes would have to be deemed to be there in the Letters Patent. Before parting, learned Judge ultimately noted that tremendous expenditure had already been made in creating the infrastructure for the Madurai Bench and that the subject of creation of a High Court Bench at Madurai was in the vogue for the last thirty years. Learned Judge ultimately came to the conclusion that the petitioner could not plead ignorance of the developments regarding the creation of Bench at Madurai and the writ petition was liable to be dismissed in limine on the ground of laches. The learned Judge, therefore, dismissed the writ petition, W.P. No.3333 of 2002.

8. The judgment was assailed by the learned senior counsel Shri Vijayan on various aspects and very strangely, the finding of the learned single Judge that there was a power via Sec.51 of the State Reorganisation Act to create a permanent Bench was also assailed though this question was never raised in W.P. No.3333 of 2002 and only in W.P. No.2402 of 2002 and the learned Judge had also considered that question while disposing of that writ petition alone though in a common judgment but, separately. That question was not raised in this writ petition, viz. W.P. No.3333 of 2002. However, we have already pointed out that the petitioner in W.P. No.2402 of 2002 did not challenge the judgment further. We therefore find it extremely difficult now

to deal with the question as to whether the provisions of State Reorganisation Act would be applicable to the State of Tamil Nadu and the Madras High Court and further whether that provision would be available to enable the creation of a permanent Bench at Madurai. But, before we express one way or the other, we must state some facts on record.

9. It is quite true that there was a Full Bench resolution dated 3 1-8-1995 whereby there was a proposal to create a Circuit Bench. However, it seems that thereafter a letter was directed by the Hon□ble Law Minister, Government of India and, therefore, a Committee was formed by the High Court, consisting of the Hon□ble The Chief Justice and six other companion Judges, for the consideration of creation of a Bench at Madurai. This Committee, after the deliberations, noted the working strength and the sanctioned strength of the High Court, which was to be raised from 32 to 42 and also noted that after the formation of the High Court Bench at Madurai, one-third of the total work was likely to be dealt with by the Madurai Bench. For that, the Committee observed that the sanctioned strength of 42 Judges would have to be increased at least to 55 Judges and then alone the Madurai Bench could be started with 12 Judges or more. The resolution then proceeds to say:

□The High Court, on principle, agrees to have a permanent Bench of the High Court at Madurai as envisaged under Section 51(2) of the States Re-Organisation Act, 1956. Notification can be issued only after all the infrastructure facilities are provided to start the permanent Bench of the High Court at Madurai. It would take at least two years to complete the construction of buildings and only when all the facilities are available, a permanent High Court at Madurai can be started.□

It is stated at the Bar and not controverted that this decision was confirmed by the Full Court, by its resolution dated 18-4-2000. Therefore, it is obvious that the petition has been filed even without ascertaining the facts regarding the dates of the various resolutions. The Full Court resolution would seal the fate in so far as the controversy regarding the Circuit Bench vis-a-vis the Permanent Bench at Madurai. We are mentioning this because during the argument before us, it was haltingly suggested that if at all the Bench was to be created there, it could only be a Circuit Bench subject of course to the objections raised by the petitioner. We, therefore, proceed on the footing that the proposed Bench at Madurai is a Permanent Bench.

10. As has already been stated earlier, Shri Vijayan reiterated before us all the contentions raised before the learned single Judge. In addition, he also argued the question of the applicability of Sec.51(2) and (3) of the State Re-organisation Act. It is, therefore, we have to say that the said argument would not be open to Shri Vijayan at least in the present appeal. That question was not raised in W. P. No.3333 of 2002 and was restricted only to W.P. No.2402 of 2002 which verdict of the learned single Judge has remained unchallenged at the instance of the petitioner therein. It will, therefore, not be possible to appreciate that contention in this writ appeal. Before we consider the other arguments, we must, however, take note of the contentions raised by the learned Additional Solicitor General of India, Shri V.T. Gopalan and the learned Additional Advocate General of State of Tamil Nadu, Shri Muthukumarasamy.

11. Shri Muthukumarasamy very strenuously argued before us the lack of bona fides on the part of the petitioner and the petition being hopelessly delayed. It was urged that the subject of creating a Bench at Madurai – permanent or circuit – was broached and was being discussed publicly about thirty years back. The petitioner had also referred to the Full Court resolution of the High Court dated 31-8-1995. It is very strange that the petitioner should have approached the Court for the first time in the year 2002, that is after about seven years on the specious plea that firstly he was a new entrant at the profession and secondly, he did not know about the Full Court resolution. The petitioner certainly cannot disown the knowledge regarding the resolution because he has relied upon it and quoted the same. We have deliberately quoted the plea of the petitioner at the beginning regarding the laches at the end of paragraph 2 of this judgment because the learned Additional Advocate General has very seriously opposed the petition on the ground of laches. More than that, the learned Additional Advocate General questions the propriety of such a petition at this juncture.

12. The contention is that the resolution of the High Court firstly resolving to create a Bench at Madurai and secondly agreeing in principle to open a permanent Bench were not secret decisions. It is then pointed out that the High Court had very clearly indicated that unless the whole infrastructure for the said Bench was made available, the Bench could not be opened. It is further pointed out that there was a ceremony for laying the Foundation Stone at Madurai held on 13-04-2000, which was attended by the then Hon'b le Chief Justice of India, Shri Dr. Justice A.S. Anand as also the Hon'ble the Chief Minister of State of Tamil Nadu and other dignitaries and it was since then that the buildings of the High Court and the High Court complex were being constructed by the State at the tremendous cost of about Rs.75 crores. Learned Additional Advocate General contended that all these were not secret and strangely enough even then no writ petition came to be filed almost for two years and it was only in the year 2002 when substantial work was done for the establishment of the High Court Bench at Madurai that the present writ petitions came to be filed. The learned Additional Advocate General contended that approximately seventy-five acres of land had to be acquired by the State Government for the High Court complex. The argument, therefore, is that the writ petition at such juncture could not be filed and the very bona fides of the petitioner to file such a writ petition come into serious dispute because of the timing.

13. Our attention was also invited to the last paragraph of the impugned judgment where the learned single Judge has very strongly criticised the petition on account of laches. Mr. Vijayan tried to get out of this difficult situation by suggesting that firstly the petitioner did not know about this. Now, we cannot accept such a bald plea of innocence. The petitioner in W.P. No.2402 of 2002 had been a lawyer from 1986 and the petitioner in W.P. No.3333 of 2002 has chosen to remain blissfully vague in paragraph 19 by suggesting that he had entered the profession 'quite recently'. Today, as the position stands or even as it stood at the date when the writ petition was argued, very substantial progress had been made and huge expenditure was already incurred. Under such circumstances, to file a petition opposing the creation of a Bench at Madurai would only be putting a

spanner in the otherwise smooth running machinery. According to the learned Additional Advocate General, the resolutions of the High Court passed in the Full Court Meeting on 31-8-1995 as also later on in the year 200 0 were well known to the general public. Learned senior counsel denies that knowledge but, we simply cannot accept that plea as the ceremony of laying of the foundation stone was held in the first half of the year 2000. It, therefore, cannot be countenanced that nobody and more particularly the petitioner did not know about any thing.

14. During the debate, we specifically asked the learned senior counsel as to whether the petitioner was opposed to the creation of Madurai bench Circuit or Permanent at all or whether he was only objecting to the process by which the said Bench was being created. In short, the query was as to whether the Bench was opposed on principle or the objections were only of procedural nature. Learned senior counsel very fairly accepted that the petitioner was opposed to the creation of the Bench altogether as, according to the petitioner, that would rob this Court of its structural unity and, according to the learned counsel, the creation of Bench was quite unnecessary. If this was the stand then, the petitioner cannot plead that he did not know about the Full Court resolution and, therefore, did not file the writ petition in time. Apart from this, the creation of the Bench at Madurai was fait accompli, which was clear from the fact that the foundation stone laying ceremony was held in April 2000. The broader question as to whether there should at all be a Bench at Madurai could be raised even at that juncture. After all, the Full Bench resolution was passed way back in the year 1995. Even if it is to be argued that the Full Bench resolution had not fructified into a decision to create the Bench and, therefore, the petitioner could wait, the further silence on the part of the petitioner for two years even after the foundation stone laying ceremony is completely inexplicable. The petition is totally silent about it. After the Government has spent more than Rs.75 crores in creating the infrastructure in pursuance of the Full Court resolution of the Madras High Court, it is futile at this stage to enquire into the question as to whether the Bench at Madurai is justified or not. In that view also, the petition suffers from lack of bona fides as well as laches.

15. Very interestingly, learned senior counsel, though haltingly, contended that all the expenditure made by the State Government even without there being any Presidential notification or the Central Legislation or any order by the Chief Justice in terms of Clause 31 of the Letters Patent and that such expenditure was not permissible. We fail to follow any rationale behind this argument. In the first place, it pre-supposes that the petitioner had the knowledge about the expenditure being made and the steps taken by the State Government to create infrastructure. It very seriously tells upon the very bona fides of the petitioner that he did not choose to challenge that expenditure and waited for about two years even after the ceremony of laying of foundation stone was held.

16. Secondly, in this argument, the condition precedent laid

by the High Court by its Full Court resolution is also being completely ignored. Right from the first resolution, the High Court had taken a very clear stand that unless the strength of the Judges is increased and the complete infrastructure is created, the Bench at Madurai could not start operating. If this was the position, to wait for a legislation or an order for creating the Bench first before even the expenditure was made is unthinkable. After all, in the democratic set up, when the important decisions are taken in principle, there is nothing wrong in taking steps to implement those decisions. Nothing has been shown before us by way of any precedent that the creation of infrastructure is not possible unless the Bench is actually created by a legal instrument. The expenditure made in expectation of a legal instrument would be perfectly justified and we do not see anything amiss in that. We are, therefore, of the clear opinion that this is a case of cry in wilderness particularly after the milk is spilt. The petition appears to be an apology for the earlier silence on the decision to create and set up a Bench at Madurai. That would have shown the bona fides of the petitioner. The petition ought to have filed then. That not having been done, we are constrained to hold that the petition is hopelessly delayed, suffers from the laches and is without any bona fides. In our opinion, the learned single Judge was quite right in observing that the petition was liable to be dismissed in limine.

17. This takes us to the other argument by the learned senior counsel that the High Court had no jurisdiction to pass the resolution dated 31-8-1995 and the subsequent resolution of the Committee dated 24 -1-2000, which was ratified by the Full Court by resolution dated 18 -04-2000 for creating the permanent Bench at Madurai, in the absence of an order by the Chief Justice under Clause 31 of the Letters Patent or a legislative provision for creating a permanent Bench at Madurai. Learned counsel says that the power to create a Bench of the Madras High Court would lie only with the Central Government as the subject is covered by Entry 78 of the Union List under Schedule VII to the Constitution of India. The said entry reads as follows:

"78. Constitution and Organisation including vacations of the High Courts except provisions as to officers and servants of High Courts; persons entitled to practise before the High Courts."

He, therefore, suggests that even for initiating the proposal to create the Bench at Madurai, a legislative pronouncement or, as the case may be, an order under Clause 31 of the Letters Patent was necessary and, in the absence of the same, the process initiated to create a Bench at Madurai is otiose and without jurisdiction.

18. The argument is undoubtedly incorrect. In the first place, the learned counsel has not been able to show us anything to suggest that the Chief Justice/High Court cannot initiate the proposal to create a Bench. It is undoubtedly true that under Clause 31 of the Letters Patent, the Chief Justice can start a Circuit Bench, of course, with the prior approval of the Governor. In fact, the resolution dated 31-8-1995 was only to that effect. However, it seems that thereafter the proposal was mooted to create a Permanent Bench, with which the High Court seems to have agreed. It is pointed out by Shri V.T. Gopalan that it is for that, resolution dated

24-1-2000 was passed by the Special Committee of the High Court, which was constituted by the then the Chief Justice and the resolution was also ratified by the Full Court later on. According to the learned Additional Solicitor General, the decision, therefore, was taken to create a Permanent bench at Madurai, which was to be implemented later on through a legal procedure. He argues that the Bench can be created firstly by passing a specific enactment in pursuance of the powers under Entry 78 of the Union List in Schedule VII to the Constitution or secondly, through the Presidential notification made under Sec.51(2) of the States Reorganisation Act. In addition to this, learned Additional Solicitor General says that a Circuit Bench can be created under Clause 31 of the Letters Patent which has been found to be on par with the provisions of Sec.51(3) of the States Reorganisation Act as held in State of Maharashtra v. Narayan (supra). He made a statement that a proper step will be taken to create a Permanent Bench under a proper legislation which could be either passing the law for that purpose under Entry 78 of the Union List or, as the case may be, by a Presidential notification under Sec.51(2) of the State Reorganisation Act. After this specific statement made at the Bar by the learned Additional Solicitor General, we have no doubts in mind that a proper course will be undertaken for creation of the Bench at Madurai and unless such steps are taken, the Bench will not be operative unless, of course a third option of creating a Circuit Bench via Clause 31 of the Letters Patent is taken, for which a prior approval of the Governor would be necessary. However, we cannot countenance an argument that the process to create a Permanent or a Circuit Bench at Madurai could not have been initiated at all unless there was a law passed or unless a Presidential Notification was issued under Sec.51(3) of the States Reorganisation Act or unless the Chief Justice had passed an order with the prior approval of the Governor under Clause 31 of the Letters Patent. We have already explained and it has already come in the address of the learned Additional Solicitor General that the Central Government had also taken a decision favouring a Permanent Bench at Madurai. The High Court had also taken a decision firstly to create the Circuit Bench way back in the year 1995. After all, when such decision is taken, it has to be considered by the concerned authorities like the Central Government, the Chief Justice and the High Court or, as the case may be, the Governor. The peculiarity of the situation here was that the High Court agreed to have a Circuit Bench or, as the case may be, a Permanent Bench only provided there was a full infrastructure ready and there was nothing wrong in it because it would have been futile to create/constitute a Bench first and then to wait for years together before activating the same. It is impossible for a Bench to work in the absence of the necessary infrastructure like proper buildings for the High Court, residential accommodation for the Judges, residential accommodation for the staff and the other facilities like Chambers for the lawyers, etc. The contention that all the exercise is without jurisdiction is, therefore, obviously incorrect.

19. The decision by the Central Government to create a Bench at Madurai backed by the administrative decision of the High Court would provide a firm pedestal for taking taking the initial steps to create a Bench. We do not see anything wrong in the State Government creating the necessary infrastructure in pursuance of the agreement by the High Court and the decision taken by the Central Government. The learned Additional Solicitor

General argues, rightly in our opinion, when he says that a decision was already taken by the Central Government and it should be left to the Central Government to implement the same by taking proper steps.

20. Shri Vijayan, however, took great exception to the factual statement made by Shri V.T. Gopalan in which the learned Additional Solicitor General also referred to Sec.51(2) of the State Reorganisation Act and wanted to contend that such a decision could not be possible in view of the fact that the State of Tamil Nadu was not a "new State" and that the power under Sec.51(2) of the States Reorganisation Act could be implemented only in respect of the "New State". We have already explained that the learned single Judge has already held that the words "State of Tamil Nadu" (the then Madras State) referred to in Sec.4 under Part II of the States Reorganisation Act can be deemed to be a "new State" and the inference of the learned single Judge and the consequential dismissal of the writ petition, W.P. No.2402 of 20 02, where this question was raised has remained unchallenged. We would, therefore, leave the question at that. Further, in our opinion, it would now be futile to go into that question as the procedural aspect of creation of the Bench of the Madras High Court at Madurai is inextricably connected with the basic question as to whether there should be a Bench at all at Madurai or not. We have already pointed out that this basic issue and the decision therefor could have been challenged only at the proper time. The petitioner chose to keep silent at the material time and has chosen to woke up now after crores of rupees have been spent and is trying to raise the procedural objections only to thwart the basic objective of creation of the Bench at Madurai, which is not permissible. We have no doubts in our minds that the Central Government would take proper steps in law procedurally by taking recourse to proper legal procedure. In any event, by a mere procedural challenge, petitioner could not be permitted to achieve a wider objective of thwarting the Bench at Madurai at all more particularly at this juncture in the year 2004 when the first decision was taken in the year 1995 and was ratified in the year 2000 after a firm decision was taken in that behalf by the Central Government and further when crores of rupees are spent in creating infrastructure.

21. It must be borne in mind that the High Court, in exercise of its powers, cannot ask the Legislature to legislate or to legislate in a particular manner. So also, the High Court shall not ask the Legislature not to legislate or to legislate in a particular manner. How a particular objective is to be carried out or realised has to be left to the wisdom of the Legislature altogether and we have no doubts that the objective of bringing about the Bench of the Madras High Court at Madurai shall so obtained. We, therefore, agree with the learned single Judge. The judgment of the learned single Judge, dismissing the writ petition, W.P. No.3333 of 2002 and dismiss this appeal. No other point were argued excepting those referred to above.

22. In the result, the appeal is dismissed. However, in the circumstances, there will be no order as to the costs.

Index:yes
Website:yes

Jai

To:

1. Secretary to Government
Ministry of Law Justice & Company Affairs
Union of India
New Delhi

2. Secretary to Government
Ministry of Law
State of Tamil Nadu
Chennai 9

3. The Registrar
High Court of Judicature at Madras
Chennai 104